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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,604	09/26/2000	Jacob K. Gotwals	042390.P9241	5203
7590	09/10/2004		EXAMINER	KIM, PAUL L
John Travis Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard 7th Floor Los Angeles, CA 90025			ART UNIT	PAPER NUMBER
			2857	
			DATE MAILED: 09/10/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/669,604	GOTWALS ET AL.
	Examiner	Art Unit
	Paul L Kim	2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 May 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Yemini et al.

With regard to claims 1-3, 6, 8-10, and 13, Lewis teaches a method and system for evaluating a system comprising: identifying significant behavioral properties based on measured data in a system (fig. 4, step 100), determining an insight associated with the significant behavior properties (fig. 4, step 102), and determining a advice associated with the insight (fig. 4, step 106).

Lewis teaches evaluating faults in a communications network, but does not teach a computer system being testing. Yemini et al teaches a method for detecting problems in a computer system that identifies behavioral properties (col. 8, lines 23+ & col. 12, lines 54-57) and determines an insight (col. 9, lines 3-7). Since Lewis and Yemini et al are both within the art of identifying problems in complex system and since Lewis discloses that systems such as database systems and spread sheet systems (col. 10, lines 61-64) can also be evaluated, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Lewis, so that the system has the ability to

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test a computer system, as taught by Yemini et al, so as to derive the benefit of a versatile system that can test a wide variety of systems.

With regard to claims 4, 5, 11, and 12, Lewis teaches generating an explanation of the insight and advice (fig. 7).

With regard to claims 7 and 14, Lewis teaches providing the information to a user (fig. 1, part 46).

With regard to claims 15 and 16, Lewis teaches an evaluation system comprising: an interface to receive measured values of computer system performance parameters (fig. 4, step 100), an interpreter coupled to the measurement interface to receive measured data from the interface and to provide behavioral property data (fig. 4, step 102), a behavioral interpreter coupled to the measurement interpreter to receive the behavioral property and provide insights and explanations (fig. 4, step 106), and a user interface coupled to the interpreter (fig. 1, part 46).

Lewis teaches evaluating faults in a communications network, but does not teach measuring behavior parameters of a computer system. Yemini et al teaches a method for detecting problems in a computer system that measures behavioral properties (col. 8, lines 23+ & col. 12, lines 54-57) and determines an insight (col. 9, lines 3-7). Since Lewis and Yemini et al are both within the art of identifying problems in complex system and since Lewis discloses that systems such as database systems and spread sheet systems (col. 10, lines 61-64) can also be evaluated, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Lewis, so that the system has the ability to measure properties of a computer system, as taught by Yemini

et al, so as to derive the benefit of a versatile system that can test a wide variety of systems.

With regard to claim 17, Lewis teaches the interpreter including a behavior knowledge interpreter (fig. 1, part 20).

With regard to claim 18, Lewis teaches the interpreter including a compiler (fig. 1, part 22).

With regard to claim 19, Lewis teaches the interpreter including an insight generator (fig. 1, part 34).

With regard to claim 20, Lewis teaches the insight generator including a report generator (fig 1, part 32).

Response to Arguments

3. Applicant's arguments filed May 24, 2004 have been fully considered but they are not persuasive. With regard to arguments that Lewis does not teach "identifying significant ones of behavioral properties", claims in a pending application should be given their broadest reasonable interpretation (In re Pearson, 181 USPQ 641 (CCPA 1974)). In column 3, lines 54-64 Lewis teaches identifying network faults using different methods such as a decision tree. Decision trees can be used to identify "significant" behavioral properties. As an example, Tong et al teaches that decision trees can be used to make diagnostic decisions based on qualitative information of components of a machine.

As further evidence that identifying behavioral properties and forming evaluations on them is known in the art, Barnett et al teaches a system and method for diagnosing a computer system in which performance information for different components of the system under test is measured and rules are written according to configuration information. The rules are used to provide insight into diagnosis.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gibson et al teaches a method of analyzing fault log data for a machine.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 571-272-2217.

The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK
August 31, 2004

Marc Hoff
MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2850